

No. 87-1875

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IN THE  
**Supreme Court of the United States**  
October Term, 1987

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OTIS L. LEE  
v. Petitioner,  
THE ALBEMARLE COUNTY, VIRGINIA  
SCHOOL BOARD, et al.,  
Respondents,

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PETITIONER'S REPLY BRIEF

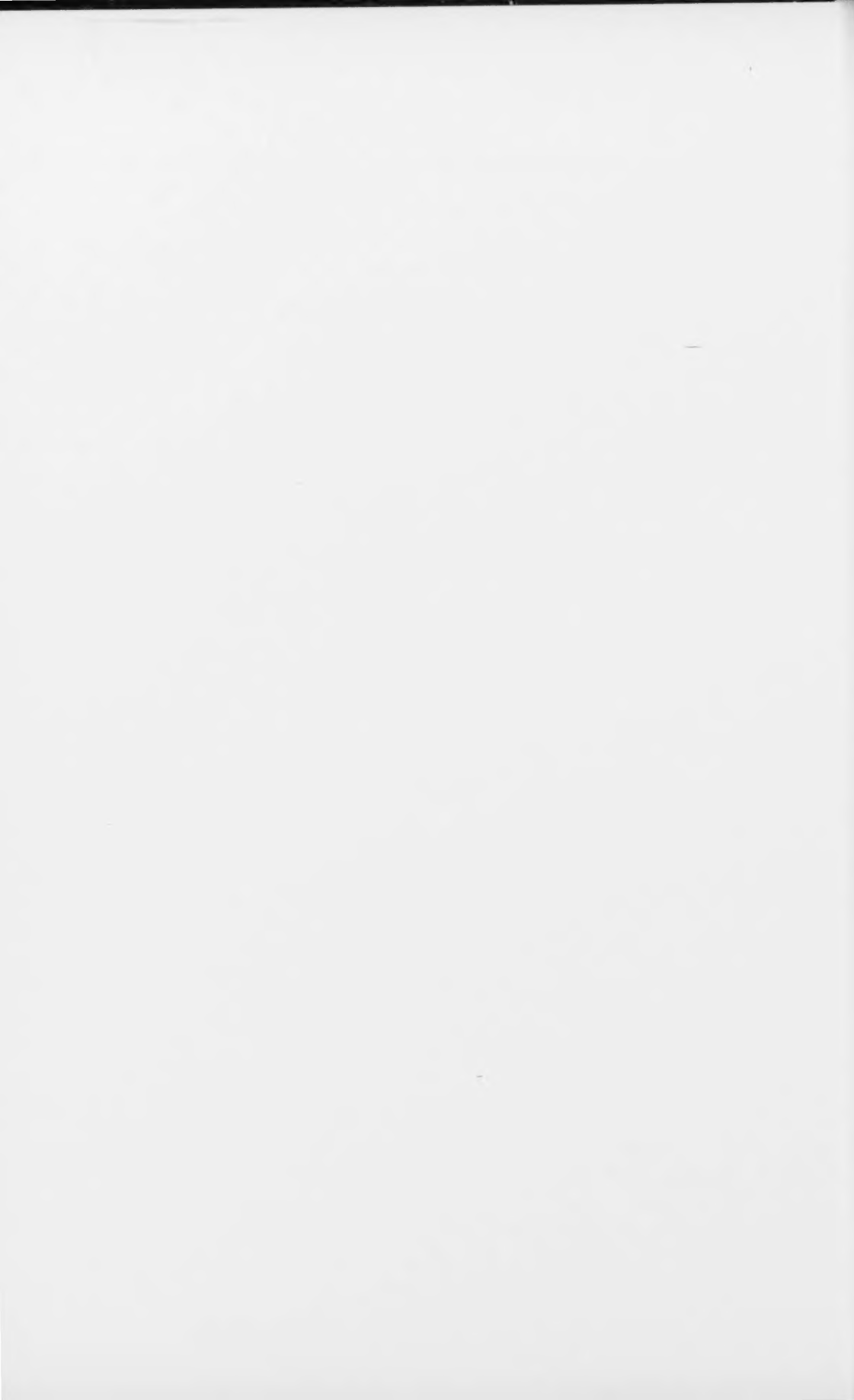
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*Attorney for Petitioner*

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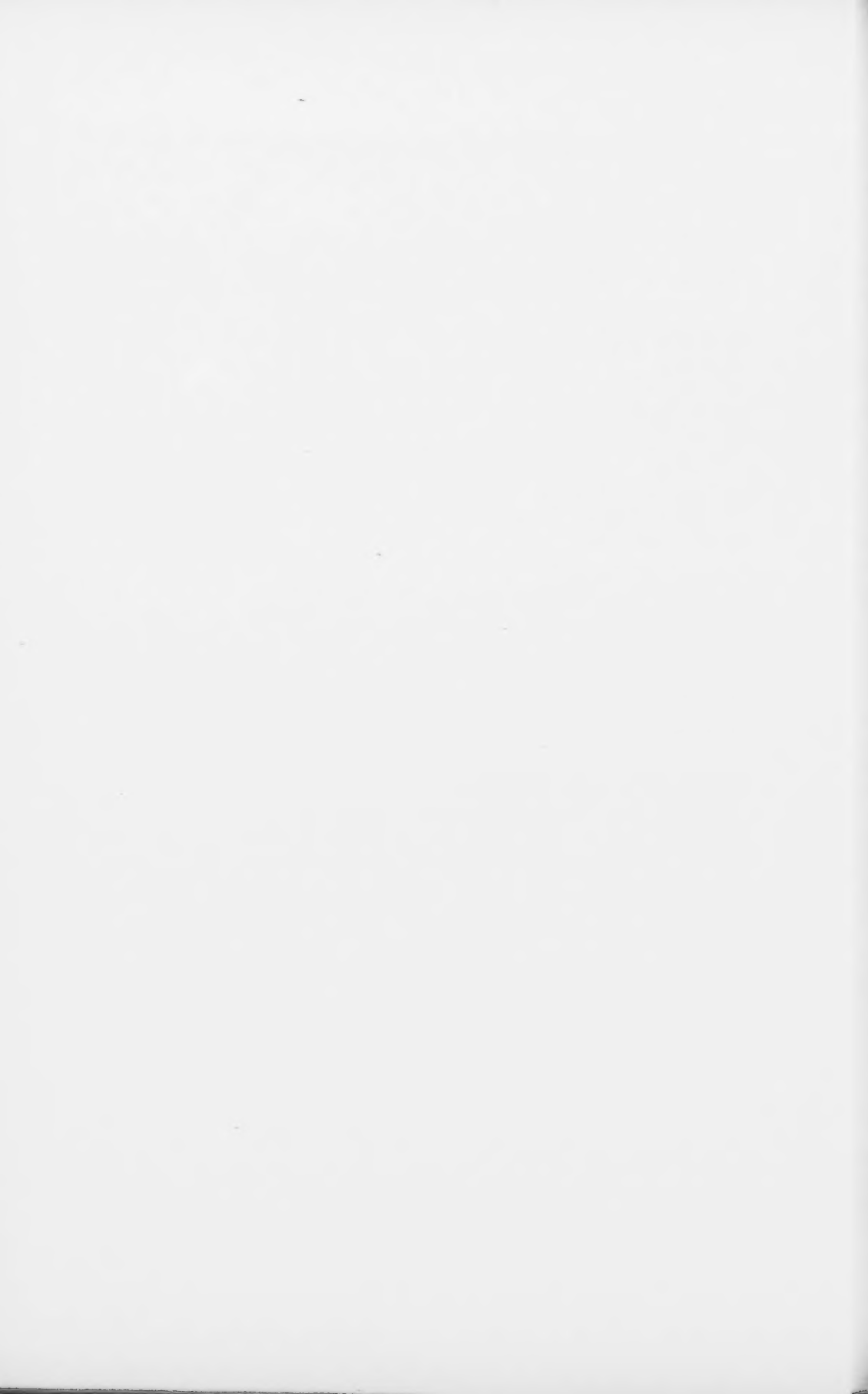
*Attorney for Petitioner*

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## TABLE OF AUTHORITIES

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## REPLY BRIEF

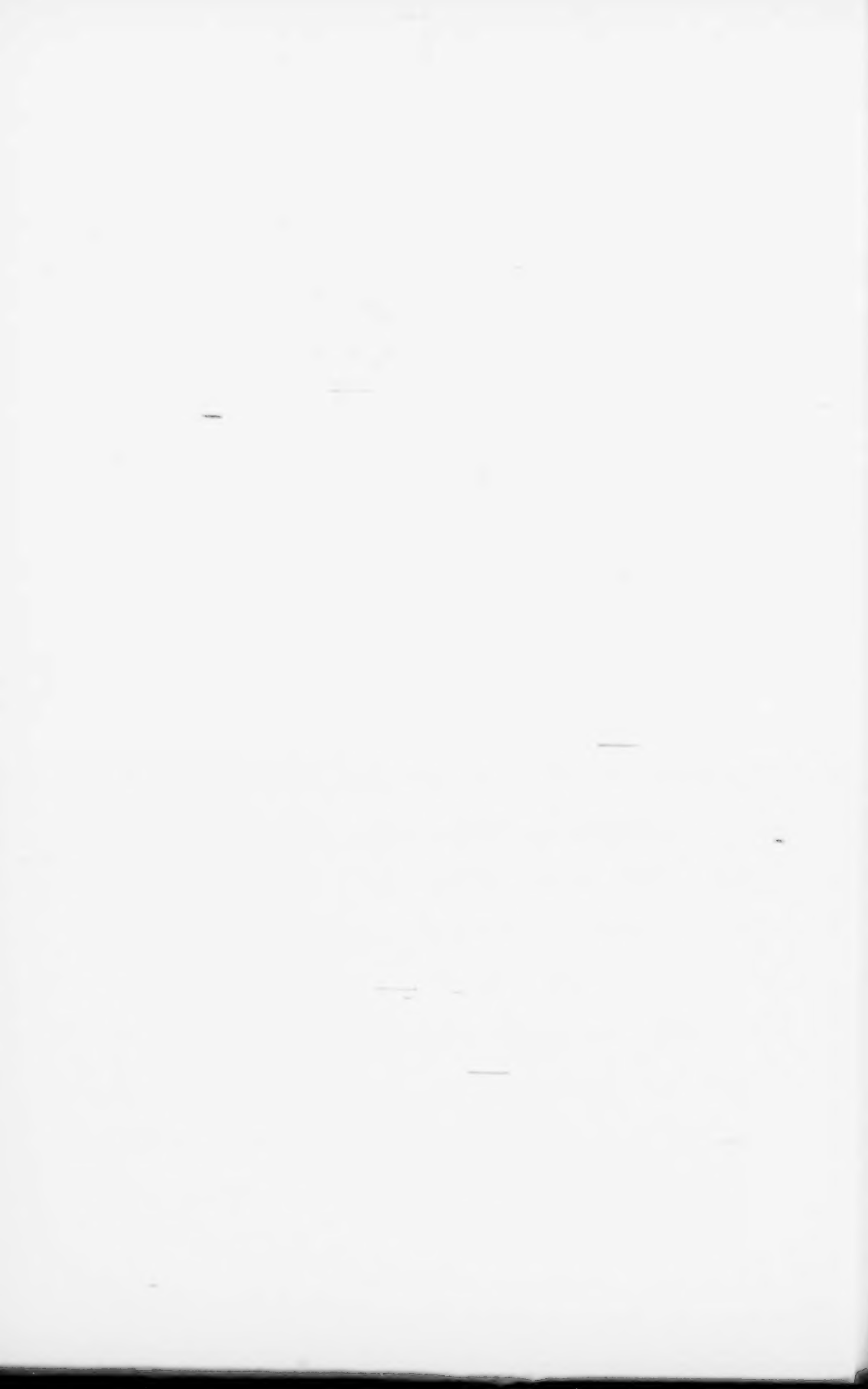
Taking the complaint to be true as to allegations of bias, prejudice, malice, hysteria, hatred and claims of unequal treatment and discrimination in firing Mr. Lee, a tenured teacher with a continuing contract to allow a de novo trial in a district court, a disputed factual matter is a "genuine" issue "if the evidence is such that a reasonable jury could return a verdict for the non-moving party". Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 2510 (1986). This Court has held in a 1983 action that the dismissal is not to be granted unless "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim." Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, reh. den. 405 U.S. 948 (1972). Mr. Lee clearly met these tests.





In granting the motion to dismiss and summary judgment, pretrial depositions were never considered by the district court as being unnecessary. Mr. Lee proffered considerable evidence and an affidavit contradicting and disputing School Board evidence and findings as well providing evidence of a biased and tainted state procedural process and discrimination. (Appendix pages 41-43.)

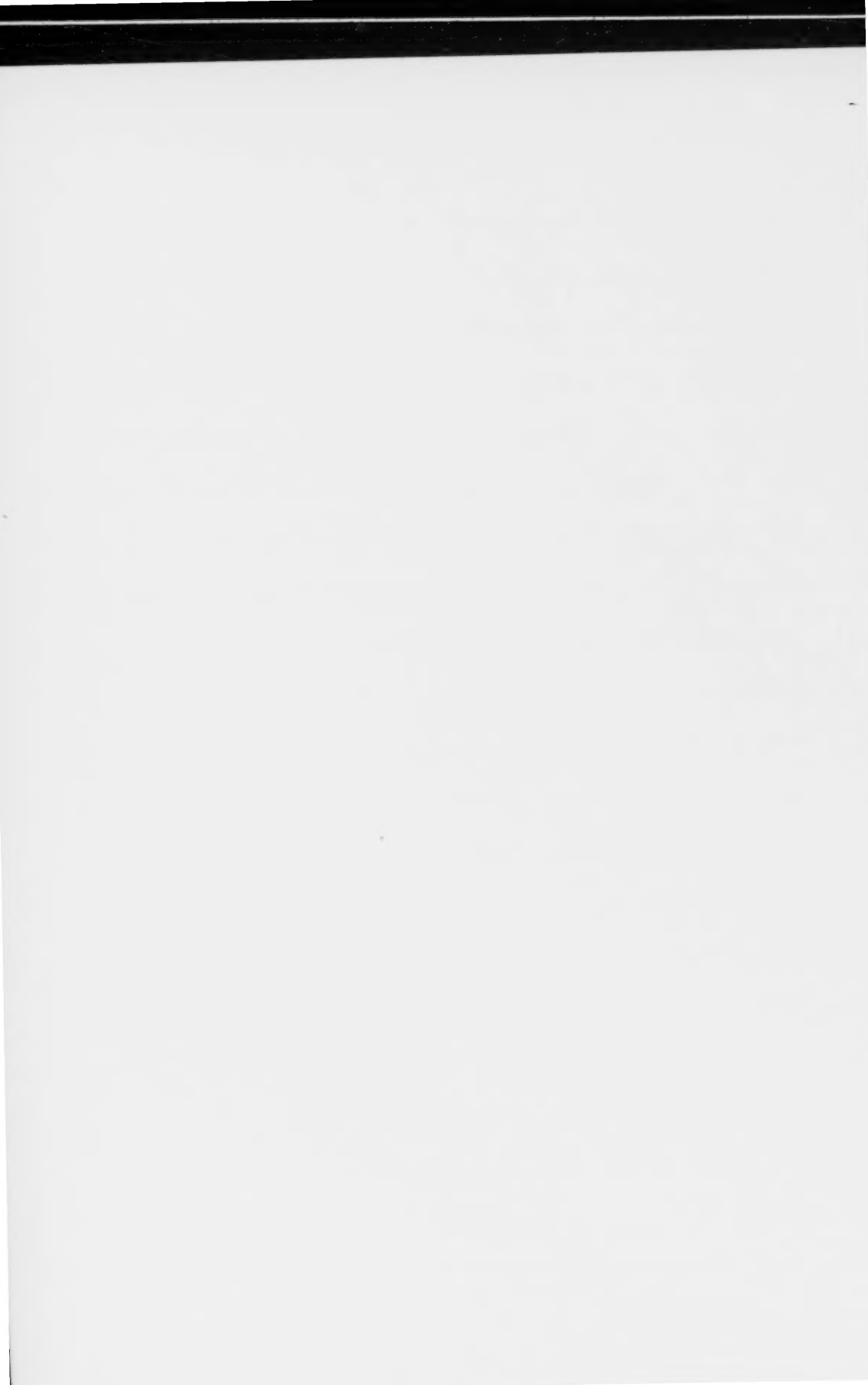
It is the function of the trier of fact alone to evaluate contradictory evidence which Mr. Lee has been deprived of. Fireman's Fund Ins. v. Videfreeze Corp., 540 F.2d 1171, 1178 (3rd Circuit 1976), cert. denied, 429 U.S. 1053, 97 S.Ct. 767 (1977). Article I § 11 of the Virginia Constitution provides "That in controversies respecting property and in suits between man and man, trial by jury is preferable to any other and



ought to be held sacred." Below is one explicit example why Mr. Lee's right to trial should proceed.

For the first time in this elongated matter the School Board now identifies in its Brief in Opposition the teacher as one of two reasons for firing Mr. Lee, viz., that Mr. Lee "improperly hired and placed at least one teacher in his position as Chairman of the Special Task Force for Minority Hiring...". (Appendix, pg. 39). The state school authority names that "one teacher" by description whose hiring, and unfoundedly so, cost Mr. Lee his job, (Opposition Brief at Page 3), "by giving preferential hiring consideration to a minority applicant who clearly was unqualified for the job and who owed money to Lee." (Emphasis added.)

This hired teacher is Mr. Holmes.



Approved by the School Board on May 10, 1982 in a public hearing (Reply Brief Addendum A) recommended by Tom Hurlburt and not Mr. Lee, Personnel Director who first interviewed him rating him as a qualified math teacher, Mr. Holmes was hired. (Reply Brief Addendum B).<sup>1</sup>

Mr. Holmes himself categorically denied under oath in the panel hearing as did Mr. Lee that Mr. Holmes owed Mr. Lee any money. (Reply Brief Addendum C).

This spurious allegation was made by one of the named Defendants in the moments of hysteria affecting Lee. Mr. W. T. Lewis, an assistant to the Superintendent of Schools, Vice Chairman of the Minority Task Force assigned later

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<sup>1</sup> Mr. Holmes resigned and gave up his contract on learning of spurious charges from a School Board member that he was "incompetent" and a "homosexual" to avoid fighting an unfounded charge.



in the Lee apartment rental matter to investigate Mr. Lee internally, who had many professional and personal differences and jealousies against Mr. Lee that grew out of Mr. Lee's chairmanship of the Minority Task Force, brings the constitutional point home. The false allegation is a graphic example, along with the multiple tainted news articles of charges made public in the community (Appendix Pages 66-72 ) published by the Superintendent against Mr. Lee damaging his name before a panel hearing was ever emplaced that contributed to a biased and unfair deprivation of reputation and Lee's tenured contract.

Mr. Lee's Complaint alleges the same deprived him of fundamental substantive due process, viz., the blatant unfairness by such conduct in the taking of his property and liberty. The Holmes'





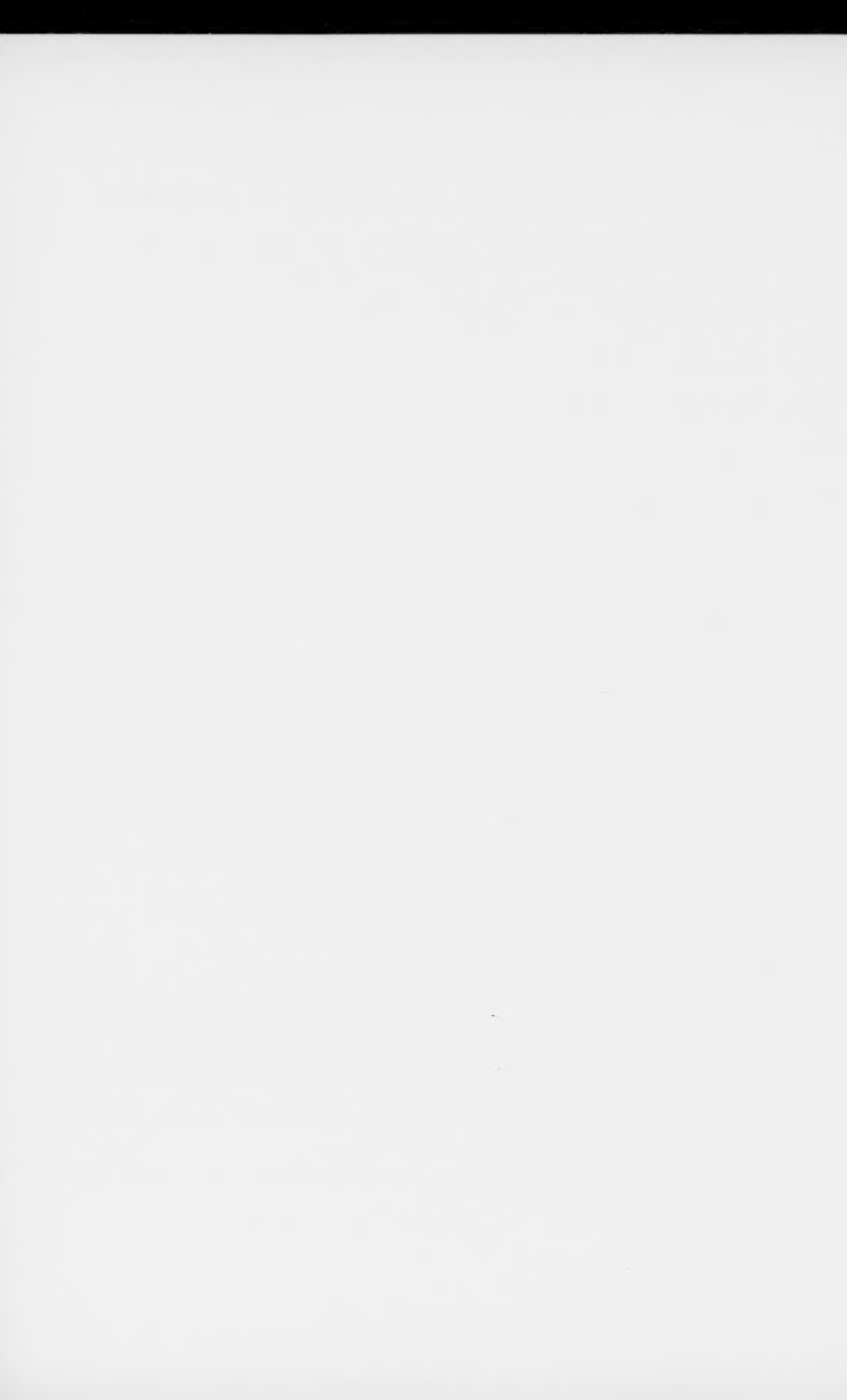
charge is typical evidence supporting Lee's claim of bias, capriciousness, arbitrariness, and malice promoted against him which are constitutionally impermissible in taking his job and good name.

The time spent (Opposition Brief Page 5) at the grievance panel hearing and the pages adduced are of no moment. It all could have consumed 180 days and a million pages. Yet such would never change the adverse, unfair, negative, hostile atmosphere culminating in local school authorities and officials such deep resentment that their adrenalin and steam rose to the level of a mob mentality. (Miss Garrison, Appendix page 43.) His basic fundamental constitutional rights under the Fourteenth Amendment and rights guaranteed by Congressional legislation can only be preserved by an adversary trial.



In the 3rd Circuit, summary judgment would have been denied. (See Matthew E. Jackson v. University of Pittsburgh, et al., 826 F.2d 230 (1987).) The 3rd Circuit reversed the granting of summary judgment, opinion by Judge A. Leon Higginbotham, who in that case gives the governing law on grants and denials of summary judgment. District courts, the 3rd Circuit holds, can not be the trier of contradicted and disputed facts creating genuine issues. They particularly point to considering the same on a claim of discrimination.

Mr. Lee gave an affidavit, uncontradicted in the district court record, (Appendix Page 53 ) that other school employees (all white) promoted real estate ventures among other businesses during school hours for years and none were ever so vilified or terminated in



the manner Lee had been for the same conduct. Mr. Lee had no notice as did anyone else that such outside activity would result in being fired muchless placed on probation.<sup>2</sup>

The School Board makes much ado about the number of blacks who it says testified against Mr. Lee. We submit this is totally an incorrect and self-serving statement. A number of black teachers did testify at the grievance panel stage but none testified adversely against Mr. Lee except the named Defendants who were all involved in one way or another conjuring up, monitoring, and speculating on Lee's motives to have helped a new young black teacher find affordable housing

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<sup>2</sup> Superintendent Gutierrez testified in pre-trial deposition that over 65% of his work force held secondary jobs.



in a nice neighborhood, a practice Mr. Lee had done for many years and in this instance, on a non-school day.

Discrimination victims, as Judge Higginbotham wrote, often come to the legal process without witnesses and with little direct evidence indicating the precise nature of the wrongs suffered. (Id. at Page 236.) Mr. Lee did more.

That is one of the reasons why our legal system permits discrimination plaintiffs to 'prove their case by direct or circumstantial evidence.' (Citing United States Postal Service Board of Governors v. Aikens, 460 U.S. 711, 714 n.3, 108 S.Ct. 1478, 1481 n.3 (1983).)

Finally, this is not a simple contract case. The taking involved state action under the colour of state law. Mr. Lee was deprived of a proprietary interest, a job he held for 23 years as well as his community reputation in the state process. It is clearly a 42 U.S.C. §1983



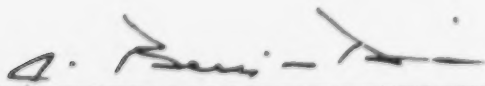


case having been deprived property and fundamental substantive rights in violation of the 14th Amendment. It is a 42 U.S.C. §1981 action having exacted upon him, a black citizen, pains, punishment, and penalties not exacted upon similarly situated white persons in the school system. The misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law is action taken under colour of state law. Monroe v. Pape, 365 U.S. 167 (1961).

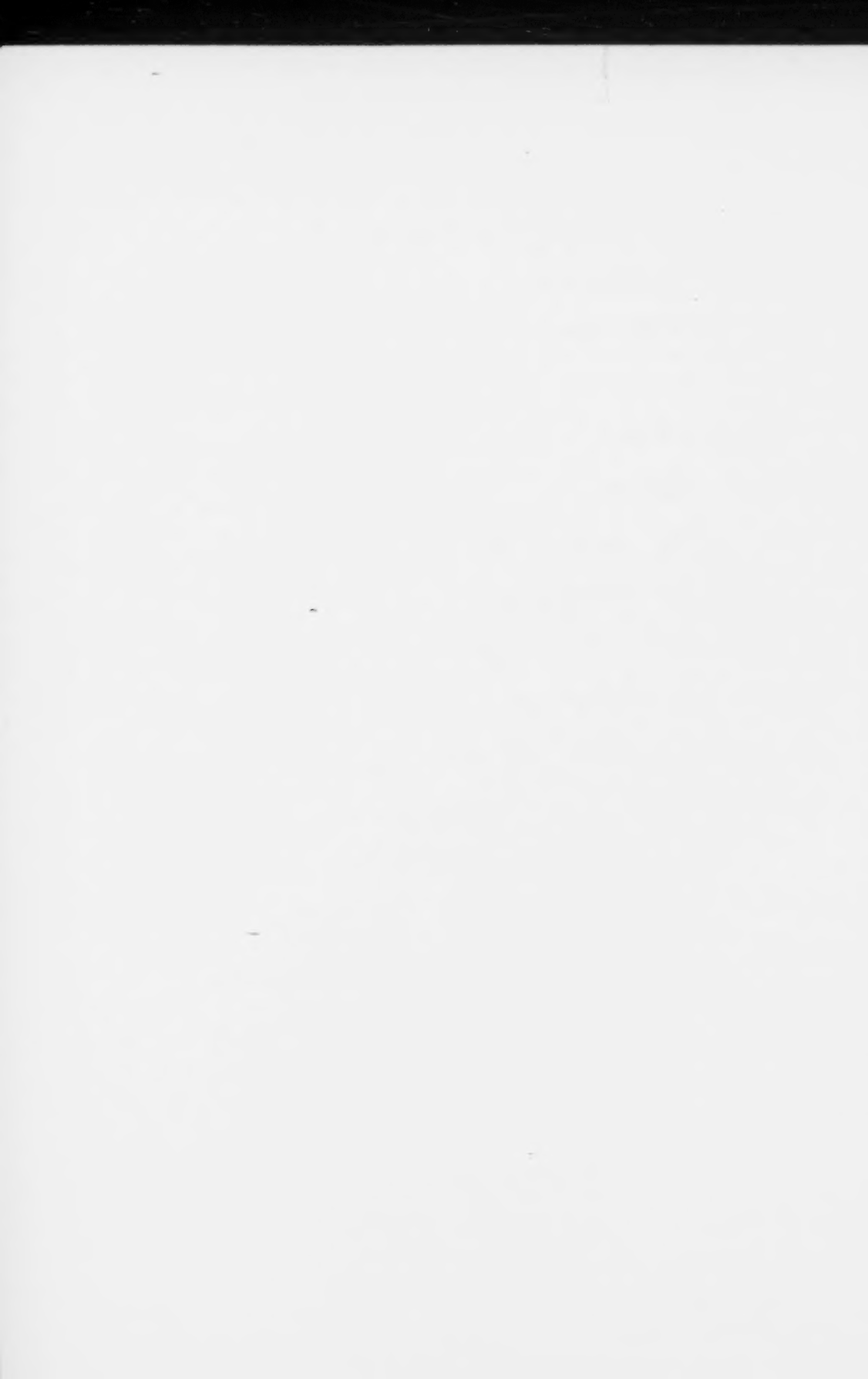
#### CONCLUSION

Mr. Lee is entitled to a trial. His writ for certiorari should be granted or in the alternative, the cause remanded summarily on the briefs by this Honorable Court for trial.

OTIS L. LEE

BY: 

J. BENJAMIN DICK, COUNSEL  
FOR PETITIONER



CERTIFICATE OF SERVICE

I certify that three copies of the foregoing Reply Brief was mailed first class, postage prepaid to Douglas L. Guynn, Esquire, P. O. Box 809, Harrisonburg, Virginia 22801 and George R. St. John, Esquire, 416 Park Street, Charlottesville, Virginia 22901, and J. Randolph Parker, Esquire, 1705 Seminole Trail, Charlottesville, Virginia 22901, this 27th day of June, 1988.

J. Benjamin Dick  
J. BENJAMIN DICK, COUNSEL  
FOR OTIS L. LEE



A D D E N D U M



ADDENDUM "A"





School Board Minutes May 10, 1982.

AGENDA ITEM 82-5-4: Commendation of  
Task Force Committee  
for Minority Hiring  
and Recommendation  
for Election of  
Minority Professional  
Personnel

Dr. Gutierrez spoke about one of his goals concerning an increase in the number of minority professional personnel for Albemarle County Schools and the distribution of these personnel. He said for that purpose a Task Force Committee was created. He introduced Mr. Otis Lee, chairman of this committee, who, in turn, introduced members of the Task Force Committee for Minority Employment.

Mr. Lee then recommended that thirty four (34) minority applicants be employed by the Albemarle County Schools. (A copy of the list of applicants is attached to the minutes.)

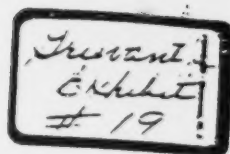
There were questions by Board members about the number of vacancies for which these persons were employed.

Dr. Gutierrez suggested tabling the minority list until contracts were back in order that there might be the full support of the Board.

Mr. Strong MOVED that the twenty five (25) people who had received the No. 1 letter from the Task Force (in lieu of contract) be elected, and that the remaining nine (9) applicants be placed on a reserve list for possible employment should vacancies occur. The motion was seconded by Dr. Tolbert. On a roll call vote, all Board members with the exception of Mr. Feggans voted for the motion. The motion was APPROVED BY A VOTE OF 6 to 1.



# COUNTY OF ALBEMARLE



## Department of Education

ROOM 310, COUNTY OFFICE BUILDING  
CHARLOTTESVILLE, VIRGINIA 22901

OFFICE OF  
SUPERINTENDENT

May 10, 1982

The Chairman of the Minority Task Force recommends to the Division Superintendent, Dr. Carlos Gutierrez, the following names for election of employees:

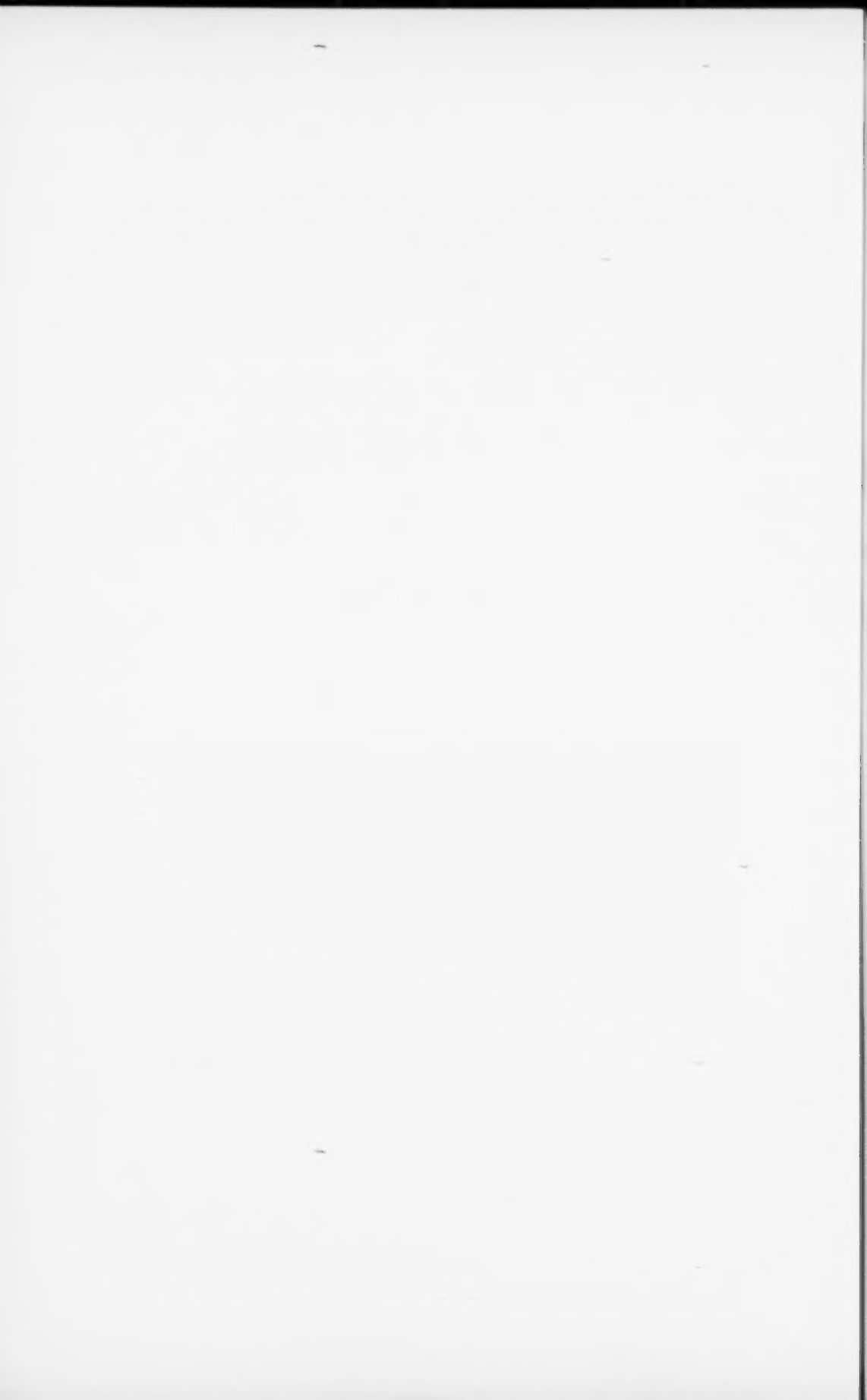
✓1. Alston, Dianne H.	Elementary
2. Alston, Monique	Middle
✓3. Asbury, Cynthia A.	Elementary 1-3
✓4. Coston, Annie	Middle & Secondary
5. Douglas, Jacqueline	Elementary
✓6. Ford, John	Physical Education, Science
✓7. Ford, Sharon	Special Education (Elementary)
8. Freeman, William	Elementary K-3
9. Frink, Leeds E.	Business - Middle
✓10. Fryar, Dian	Middle School
✓11. Glenn, Patrice	Special Education 1-2
✓12. Gibson, Fim	Elementary K-3 (2)
✓13. Harding, Bettie	Math (Middle & Secondary)
14. Harris, Lonna	Physical Education
✓15. Hicks, Clarence	Elementary
✓16. Hicks, Deborah	Secondary English
✓17. Holmes, William	Math
✓18. Jenkins, James L.	Elementary Music
19. Jones, Lutherin F.	Elementary K-3
✓20. Lofton, Angela	Elementary K
21. Magruder, Jesse W.	Elementary
22. Marshall, Leverne L.	Elementary K-4
✓23. McEachern, Willie F.	Middle 7-8
24. McGrady, Diane	Elementary 1
✓25. McLaurin, Willie Mae	Secondary
✓26. Moore, Angelia	Middle (Math)
✓27. Pugh, Kenneth D.	Elementary
✓28. Rich, William P.	Alternative Education
✓29. Robinson, Steve A.	Physical Education
30. Smith, Kathleen V.	K-3
31. Spivey, Jonathan Fletcher	K-12 Music
✓32. Stevenson, Denise	K-3
33. Von Wright, Margaret A.	Secondary
✓34. Williamson, Bettie J.	Elementary K

1952

Otis E. Lee, Chairman



ADDENDUM "B"



EXAMINATION OF THOMAS HURLBURT, PERSONNEL  
DIRECTOR, FEBRUARY 10, 1983

Q. With reference to an individual named William T. Holmes, are you familiar with that candidate's file?

A. Yes.

Q. Would you feel that he would be a viable candidate for a teaching position based upon his file?

A. I assume you have looked in his file and I assume therefore you have seen in my handwriting a statement that says essentially I would not offer Mr. Holmes an administrative position because that's what Mr. Holmes was looking for; but I might very well consider him for a teaching position. I think that's about the way it was stated. I haven't looked at that gentleman's file since a year ago or so; but basically I think I had a statement to that effect in there. (Emphasis added.)

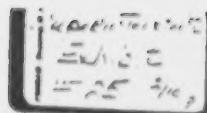
Q. And upon what did you base that statement?

A. Upon his teaching record and his background and an interview or two that I had with him. I think I met Mr. Holmes on a couple of occasions when he was seeking jobs years ago. I think Mr. Holmes had experienced some difficulties in another school system as an administrator but those difficulties had not related back into the teaching areas apparently.





## TEACHER APPLICANT INTERVIEW REPORT

Name Holmes, William J.Date 6/26/79

MANNER:	Ill-at-ease	0	50	✓	100	Poised
DISPOSITION:	Reserved			✓		Aggressive
PERSONALITY	Weak			✓		Vibrant
ENTHUSIASM:	Withdrawn			✓		Evident
SENSE OF HUMOR:	Not Apparent			✓		Apparent
APPEARANCE:	Unattractive			✓		Attractive

GENERAL IMPRESSION:	Poor	0	50	✓	100	Superior
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Grade or Subject Preference: Elementary administrator or teacherCertification: Holds PGP in Elem 4-7, Mathematics.

Remarks: Mr. Holmes has 25 years of experience in Orange county as teacher, elementary school administrator, assistant secondary administrator, and home-school coordinator. He was recently fired from his position in Orange. We discussed this situation openly. I suggested that the Albemarle County School Board would certainly not hire him as an administrator so close to Orange but might consider him as a teacher. I indicated that he might do better for an administrative position further away from his bad press. I told him I would consider him for a teaching position. He will have references sent.

Will marry divorced on or about \_\_\_\_\_

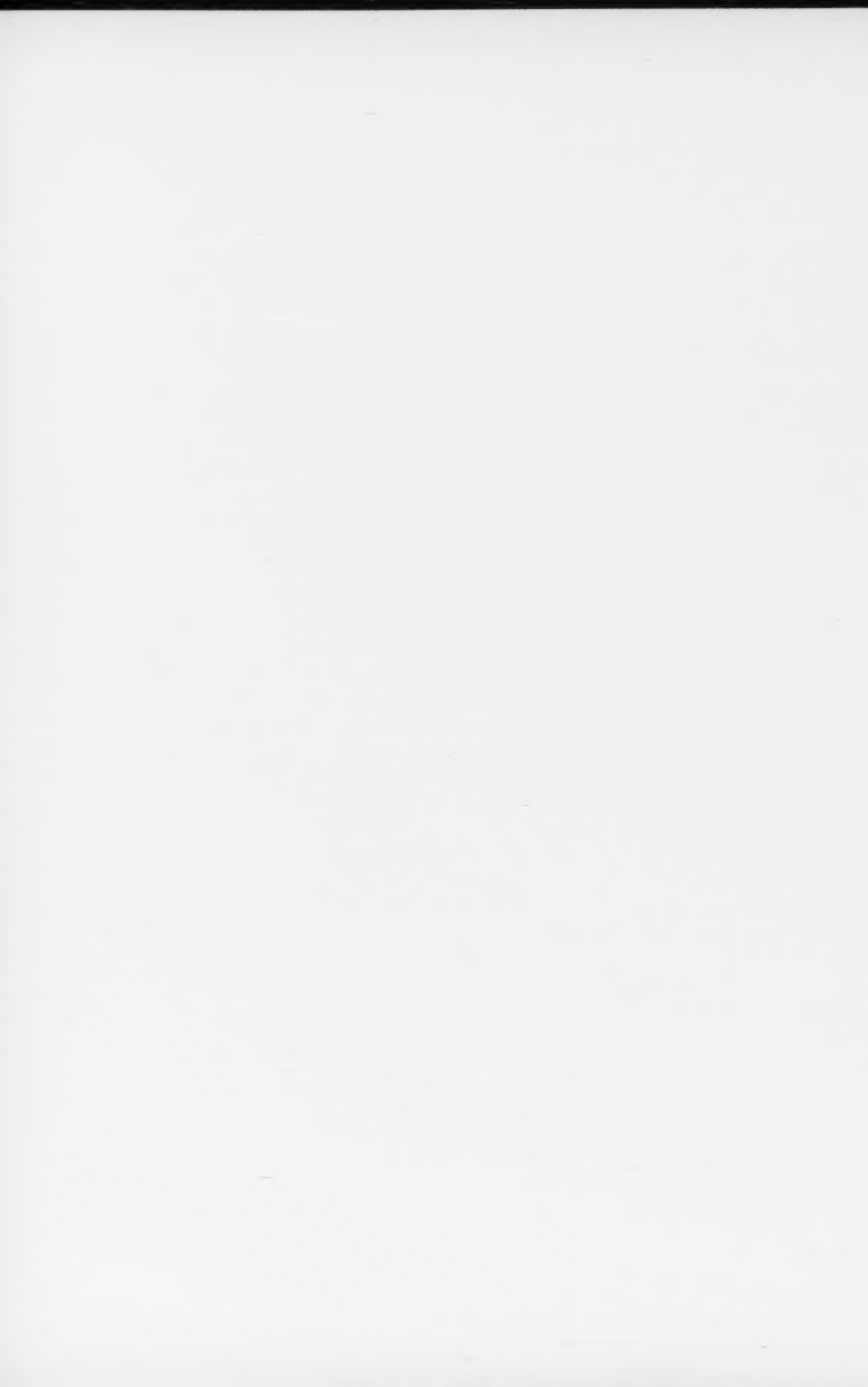
Husband or wife to work at \_\_\_\_\_

Approximate number of years expected to be in this area \_\_\_\_\_

(Over)



ADDENDUM "C"



DIRECT EXAMINATION OF W. T. HOLMES  
JANUARY 31, 1983

By: Mr. Atkins

Q. Would you state your full name please?

A. My name is William T. Holmes.

Q. Where do you reside, Mr. Holmes?

A. Orange County, Virginia.

Q. You are also known as W. T. Holmes?

A. Yes.

Q. Mr. Holmes, did you in April of 1982,  
or do you now owe Mr. Otis Lee any  
money?

A. No I do not.

Q. Thank you. Answer Mr. Bowling's  
questions.

CROSS EXAMINATION

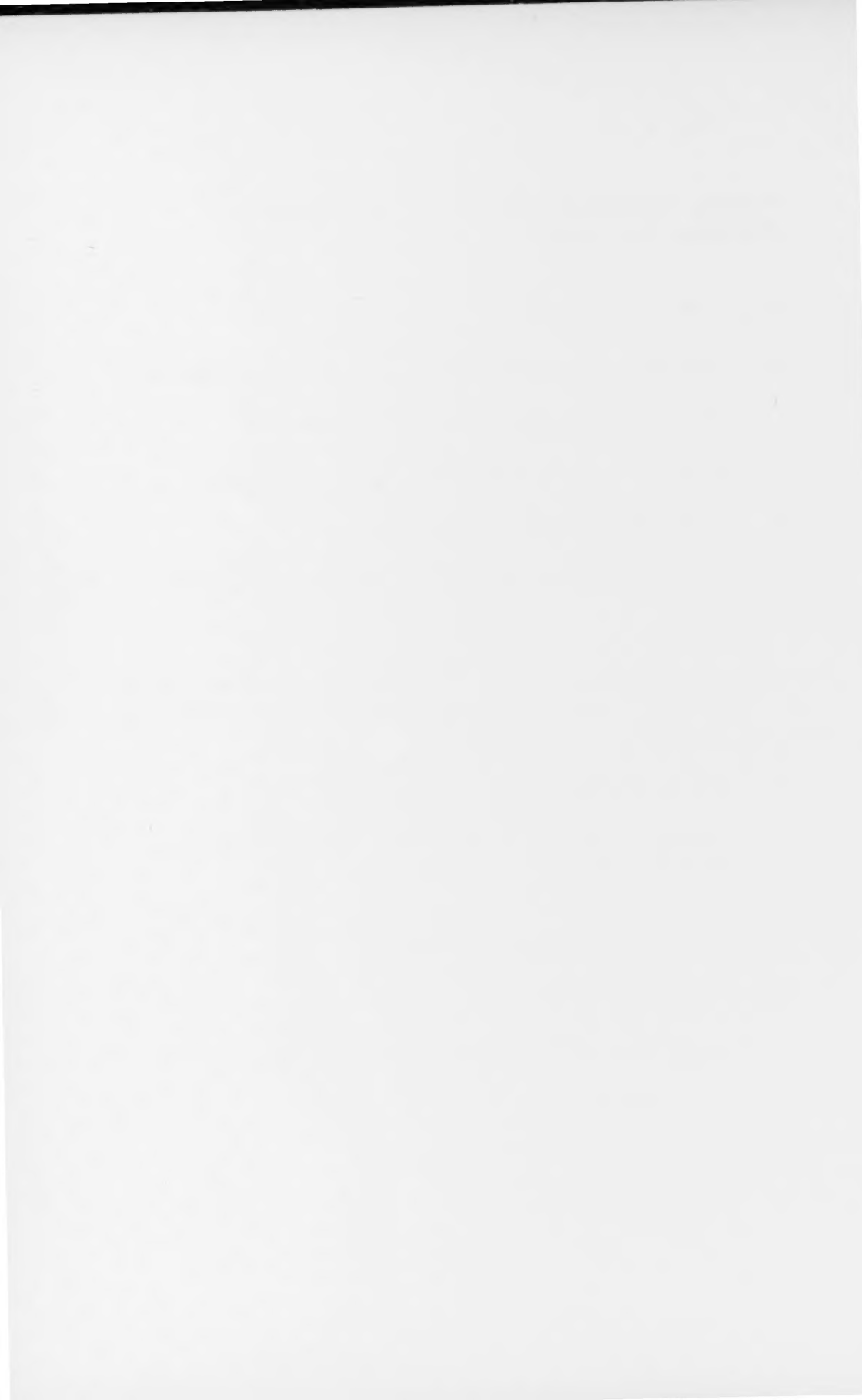
By: Mr. Bowling

Q. Have you ever owed Mr. Lee any money?

A. No I have not.

Q. Never?

A. Never.



Q. Have you ever had any business dealings with him?

A. No, none whatsoever.

Q. What relationship have you had with Mr. Lee?

A. Well, he and I have been administrators in this district, that's how I met him really.

Q. Have you had any personal relationships?

A. No, nothing personal.